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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 538

ANTHONY CAMPISI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (II R. 313–321) is not yet reported.[1]

[1] Petitioner Campisi and the petitioners in No. 383 (Coppolla and Sanantonio) were jointly tried and convicted under the same indictment, petitioner Campisi having been convicted on different counts. The government filed a brief in opposition in No. 383 on October 29, 1962.

The record in both cases is the same. "II R." designates the government's appendix in the court of appeals which contains excerpts from the trial transcript and to which have been added the proceedings in the court below. "I R." denotes the separately paginated "Appendix to Appellants' Briefs" in the court of appeals, containing, *inter alia*, the indictment and the trial court's instructions. Also on file with the Clerk of this Court is the trial transcript which, when referred to herein, is designated "Tr."

JURISDICTION

The judgment of the court of appeals was entered on July 23, 1962 (II R. 322). On September 19, 1962, the court of appeals recalled its mandate and entertained a petition for rehearing which was filed on October 1, 1962, and denied on October 3, 1962.[2] The petition for a writ of certiorari was filed on October 19, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the number and nature of the counts in the indictment and the joinder of offenses and parties fatally prejudiced petitioner, where the charges against him which were submitted to the jury consisted of a limited number of substantive counts, as to which the evidence was compartmentalized in the government's case and segregated in the trial court's charge.

STATUTES AND RULES INVOLVED

The pertinent statutes and rules are 18 U.S.C. 2(a) and 495, and Rules 8 and 14 of the Federal Rules of Criminal Procedure. They are printed in the appendix, *infra*, pp. 19–20.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner (Anthony Campisi), one Anthony J. Dona-

[2] The proceedings in the court of appeals with respect to the recall of its mandate and the ultimate denial of the petition for rehearing are lodged with the Clerk.

tiello and the petitioners in No. 383 (Edward-Carmine Coppolla and Alfred Sanantonio) were each convicted of aiding and abetting the forging of endorsements on United States Series E Savings Bonds and the uttering of these forged statements in violation of 18 U.S.C. 495 (Appendix, *infra*, p. 19) (Tr. 1203–1204). Petitioner Campisi was convicted on 34 counts of aiding and abetting Thomas Bartkovsky in the forging and uttering of seventeen of these bonds. He was sentenced to eight years' imprisonment on each count, the sentences to run concurrently (Tr. 1231–1232). On appeal the court of appeals unanimously affirmed his conviction (11 R. 313–321).

The government, in its Brief in Opposition in No. 383 (pp. 2–10), has described the scope and theory of the indictment, the proceedings relating to the motions for severance, the dismissal of counts at the close of the government's case and, with some particularity, the evidence dealing with petitioners Coppolla and Sanantonio. Here, we will discuss these matters as they relate to petitioner Campisi, and will also set forth more fully the evidence as to Campisi's involvement in the illegal bond-cashing.

THE INDICTMENT AND THE DISMISSAL OF COUNTS

The indictment contained 540 counts. Counts 1–538 charged the forging and uttering of forged en-

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The two petitioners in No. 383 (Coppolla and Sanantonio) were convicted on eighteen counts of aiding and abetting, involving nine bonds. Each was sentenced to an eight-year concurrent prison sentence (Tr. 1233–1234, 1253–1254). Donatiello was convicted on three hundred thirty-two counts and sentenced to a term of nine years on each count, to run concurrently (Tr. 1260).

dorsements on each of 269 United States Series E Savings Bonds; counts 539 and 540 charged conspiracies to commit these substantive offenses (I R. 9–63). Each of the 269 bonds was treated in two counts—one count charging forgery and the other uttering of the forged instrument. In substantive counts 405–538, petitioner Campisi was charged with aiding and abetting Thomas Bartkovsky, in forging and uttering bonds (I R. 45–57), and in count 540 with conspiring with Bartkovsky and Anthony J. Donatiello in a bond-cashing scheme (I R. 61–63).[4]

Before the jury was impanelled on the day fixed for trial (January 2, 1962), petitioner as well as other defendants moved for severances based on the length of the indictment and the joinder of offenses. The court denied the motions as having been made too "late" (II R. 5; see the government's Brief in Opposition, No. 383, pp. 4–5).[5] In support of his motion, counsel for petitioner Campisi had urged that the indictment had not been unsealed until late November 1961;[6] that he had been engaged in another trial for the first three weeks in December; and that he had advised the district judge before whom the case had

[4] Petitioners in No. 383 were named as aiders and abettors in substantive counts 1–334 (I R. 10–38), and as co-conspirators of Herbert Levine, Meyer Parks and Anthony Donatiello in count 539 (I R. 57–60).

[5] Not guilty pleas had been entered in November 1961 and the district court had fixed December 4, 1961, as the date for pre-trial motions. No motions were made on that date relating to the length of the indictment or the joinder of offenses and no extension of time in which to make such motions was sought or granted (see the Appendix to the Petition in No. 383, p. 8).

[6] The indictment was returned on October 27, 1961, and unsealed on November 20, 1961 (I R. 1).

come on December 27, 1961, for the purpose of making an assignment for trial, that under the circumstances he was not ready for trial and had been told to make his application to the trial judge (II R. 7–8). Counsel also moved for severance on the ground that, since Campisi was named only in the last half of the indictment (Counts 405–538, 540), he would be prejudiced by a joint trial since counsel "would have to sit by and let all of the testimony about the 405 counts" in which his client was not named "go into the case" (II R. 9). In denying the motion, the trial court pointed out that Campisi's trial counsel had been in the case since November,[*] that the fact that counsel had other commitments "doesn't * * * mean that he can't handle the first matter" but constitutes a "problem that every lawyer has," and that the fact that Campisi was named only in the latter counts of the indictment provided counsel with "the great advantage of something to talk about, * * * [since] they are talking about other people and not your client most of the time" (II R. 8–9). The court stated further that he was going to do everything he could "to keep the thing clear" (II R. 9).

The case thereupon proceeded to trial with four defendants, Campisi, Coppolla, Sanantonio and Donatiello; three others, Levine, Parks and Bartkovsky, had entered guilty pleas (Tr. 19–21, 22–24, 24–26). At the close of the government's case, the court dismissed the two conspiracy counts to simplify the case

[*] Petitioner's trial counsel had filed his notice of appearance on November 21, 1961 (I R. 1) and had represented petitioner when he entered his not guilty plea the next day.

for the jury. A number of substantive counts were also dismissed (II R. 230–240; see also Tr. 797–874). As a consequence, the charges against petitioner Campisi were reduced to 34 substantive counts involving 17 Series E Bonds (counts 455–471, 522–538).

THE EVIDENCE

The evidence at the trial revealed that large quantities of stolen Series E Savings Bonds had been unlawfully cashed starting in spring 1960 and continuing until January 1961.

a. In late April or early May 1960, Thomas Bartkovsky joined with "Blotchie" Donatiello and petitioner Campisi in a bond-passing scheme. According to Bartkovsky, he discussed the matter with Donatiello who explained the bond cashing "procedures" to him, "how you go about it, and how easy it was" (II R. 178–179). The next morning pursuant to prearrangement, Bartkovsky met with Donatiello and petitioner Campisi in Newark, New Jersey. The three men then drove to Somerville, New Jersey to cash bonds (II R. 179–180). During this trip, both Campisi and Donatiello further explained the bond-cashing techniques to Bartkovsky—"what to say if certain questions were asked by the tellers, and how to act, * * * and * * * how to present yourself when you walk into a bank" (II R. 180). At

The only substantive counts dismissed as to Campisi involved the "McKeon" bonds (counts 405–454, 472–521). These counts were dismissed because of the trial court's erroneous assumption that Thomas Bartkovsky had said that he received those bonds for cashing from Anthony Donatiello, rather than Campisi (compare Tr. 800–802, 807, 866–867, with II R. 188–189).

this time, Bartkovsky said, Campisi gave him as "identification" a New Jersey driver's license which Bartkovsky signed in the name of the registered owner of the bonds to be cashed that day (II R. 181). Following this, Bartkovsky entered a bank in Somerville and cashed the bonds (II R. 182). He gave the money he received and a slip indicating how many bonds had been cashed to Campisi (*ibid.*). After the three men had returned to Newark, Campisi gave him "some money back" (II R. 182–183). From that time until the middle of June 1960, Bartkovsky, accompanied by Donatiello and Campisi and using for identification blank driver's licenses supplied by Campisi, successfully cashed stolen bonds in Boundbrook, New Jersey, and Albany, New York (II R. 183–187).

Bartkovsky further testified that Donatiello and Campisi "broke up" in the middle of June 1960. Thereafter, Bartkovsky continued to work with each separately (II R. 187–188). He said that during the summer and fall of 1960, Campisi supplied him with the "McKeon" (counts 405–454, 472–521; I R. 46–52, 55–56; II R. 188–189), "Zimmer" (counts 455–457, 522–524; I R. 52, 56; II R. 189), "Lacorte"* (counts 458–462, 525–529; I R. 52–53, 56; II R. 190) and "Shamblen" (counts 463–467, 530–534; I R. 53, 56–57; II R. 190) bonds. Bartkovsky testified that he forged the endorsements on those bonds; that, with drivers' licenses provided by Campsisi, he cashed the

*On cross and re-direct examination, Bartkovsky stated that he was not certain for whom he had cashed the "Lacorte" bonds (see Tr. 733–734; 776–777).

bonds in small towns in New York State including Poughkeepsie, Newburgh, Tarrytown and Middletown; and that he received from Campisi twenty-five percent of the profits of the cashed bonds (II R. 188–190).[10] The bond owners testified that these bonds had been stolen from them; that they had never signed or endorsed them; and that they had never authorized anyone else to endorse or cash them (see, *e.g.*, II R. 155–160, 160–163, 164–166, 167–169, 169–171).[11]

Miss Elaine Walsh, a waitress at a tavern in Middletown, New York, stated that, in the fall of 1960—during the period when Bartkovsky had said he cashed bonds in Middletown with Campisi—she saw Bartkovsky in the tavern "[t]hree or four times" and that Campisi was with him "once or twice" (II R. 173, 175).

Bartkovsky further said that at the end of November 1960 (November 29), he received from Campisi $15,000 worth of bonds in the name of Sam Fankuchen which he also cashed (II R. 202–203, 206). Dr. Fankuchen testified that on October 28, 1960, $83,000 worth of Series E Bonds had been stolen from his

[10] Bartkovsky also testified that he cashed the "Burke" and "Kuklus" bonds for Campisi in October and November 1961 in Middletown (II R. 191–193, 200; cf. II R. 167–169).

[11] Alfred Raccuia also identified certain bonds introduced at trial as having been stolen from him and stated that he never authorized anyone to endorse or cash them. These bonds bore Bartkovsky's handwriting and formed the basis of substantive counts submitted against petitioner Campisi (counts 468–471, 535–538; I. R. 54, 57; II R. 226–230). There was no express testimony from Bartkovsky as to where and from whom he had obtained these bonds.

Brooklyn home and that he had not endorsed them or authorized anyone to sign his signature and cash them (II R. 44–46, 55–57). Bartkovsky further stated that, sometime in November, 1960, he had received Fankuchen bonds from Donatiello to be cashed (II R. 209–210).

Petitioner testified in his own defense denying that he had given Bartkovsky any bonds to cash or that he had ever accompanied him on bond cashing trips (Tr. 914, 923–924).

b. The evidence relating to the petitioners in No. 383 showed that during the spring and summer of 1960, first Herbert Levine and then Meyer Parks joined in a bond cashing scheme with "Blotchie" Donatiello; that they cashed stolen Series E Bonds which had been obtained from Donatiello, receiving as payment a percentage of what the bonds brought back and utilizing forged New York state driver's licenses for identification purposes; that in the summer of 1960, when their supply of bonds was exhausted, Levine and Donatiello entered into dealings with Coppolla and Sanantonio to purchase bonds; that after several meetings to this end, they purchased thousands of dollars worth of stolen Fankuchen bonds from Coppolla and Sanantonio for a price representing a percentage of the actual value of the bonds; that Levine, on his own, thereafter purchased additional quantities of Fankuchen bonds from Coppolla and Sanantonio; and that Levine and Parks, after forging Dr. Fankuchen's signature, cashed these bonds.[12]

[12] This evidence is detailed more particularly in the government's Brief in Opposition in No. 383, pp. 6–9.

THE TRIAL COURT'S INSTRUCTIONS

In his instructions the trial judge stated, *inter alia*, that the jury was the exclusive judge of the facts (I R. 162) and that the government had the burden of establishing guilt beyond a reasonable doubt (I R. 163–164). He detailed the nature of the offenses charged in the indictment (I R. 164–166), and then proceeded to marshall the evidence as to each defendant by the count in accord with his previous statement that he was going to "discuss and consider each defendant separately" (I R. 165, see I. R. 167–177). With respect to petitioner Campisi, the court stated the charges against him and summarized the bond cashing arrangements, as testified to by Bartkovsky, and Campisi's denial that he had ever participated in bond cashing (I, R. 176–177). The court further instructed the jury that it was called upon "to determine guilt or innocence of the different defendants under the different charges of the indictment" and that such guilt "must be determined individually" (I R. 164). The court further observed that the evidence against each defendant rested "essentially" on accomplice testimony (I R. 177), and that, while the "testimony of an accomplice alone, if believed * * *, may be of sufficient weight to sustain a verdict of guilty even though not corroborated or supported by other evidence * * * such testimony is to be received with caution and weighed with great care" (I R. 178). The court further advised the jury in this connection that it "should not convict a defendant upon the unsupported testimony of an accomplice

unless [it] believe[d] the unsupported testimony beyond all reasonable doubt" (*ibid.*).

ARGUMENT

Unlike the petitioners in No. 383 (Coppolla and Sanantonio), petitioner Campisi does not seriously challenge the sufficiency of the evidence to support his conviction for aiding and abetting the forging and uttering of stolen Series E bonds. Rather, petitioner relies basically on the claim (alternatively made by petitioners in No. 383) that he was denied a fair trial because of the length of the indictment, the joinder of defendants and offenses, and the ultimate dismissal of the conspiracy counts.

The facts as they relate to petitioner show that 34 counts involving 17 bonds stolen from four people were submitted to the jury; that the probative evidence relating to these counts was neither complex nor involved; that the government's case was developed at trial in such a fashion that the evidence relating to petitioner and his dealings with Donatiello and Bartkovsky was kept discrete from the evidence which detailed the bond-passing arrangements of Coppolla, Sanantonio, Donatiello, Levine and Parks; that the trial court in its instructions reinforced this segregation of the proof by marshalling the facts as to each defendant, so pinpointing the evidence on the counts left in the case involving petitioner that the jury hardly could have been confused; and that the proof of petitioner's guilt was direct, unambiguous and convincing.

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[13] Zimmer, Lacorte, Shamblen, and Raccuia.

As we pointed out in our brief in opposition in No. 383 (p. 11), to the extent that the alleged confusion and impropriety is said to stem from the length of the indictment, such a claim overlooks the fact that the indictment was long simply because a substantial number of bonds—each the subject of two separate counts, one for forgery and one for uttering—were involved. The indictment reflected the scope and nature of the criminal conduct charged and was not complicated or complex. And (as we also pointed out in our Brief in Opposition in No. 383, pp. 11–12) the fact that two bond cashing groups were involved, requiring two discrete conspiracy counts, did not necessarily indicate that confusion would result from a joint trial. The two conspiracy counts had a common defendant (Donatiello), charged parallel schemes and involved the use of the same techniques for the same illegal purpose, generally during the same time priod (see I R. 57–63). Consequently, joinder as an initial matter was proper. See Rule 8, Federal Rules of Criminal Procedure (Appendix, *infra*, p. 20); *Schaffer* v. *United States*, 362 U.S. 511, 514. There was no reason why, on the basis of the indictment alone, the court should have severed the case against petitioner. Indeed, none of the defendants made any pre-trial motions challenging the indictment or requesting severance until the morning fixed for the commencement of trial, more than a month after the date set by the Court for the making of such motions (see II R. 2–10). Petitioner (Pet. 8–9) seeks to excuse his failure in this regard by claiming that his trial counsel had insufficient time

to make such motions in view of the press of other engagements. The fact remains, however, that trial counsel had noted his appearance for Campisi on November 21, 1961 (1 R. 1), and had represented him the next day, when Campisi entered his not guilty plea. At that proceeding the court (Judge Levet) had advised counsel that pre-trial motions were returnable on December 4. No extension of time to prepare such motions or adjournment for any other reason was requested by counsel at that hearing.

As the case was submitted to the jury there was no reasonable basis to believe that the jury would be confused. To simplify the case, the court had dismissed the two conspiracy counts (see Tr. 796-866). It had also dismissed various substantive counts with the result that 34 counts involving only 17 bonds were submitted against petitioner to the jury.[14] The evidence at trial was developed in a compartmentalized and readily separable manner (see Brief in Opposition, No. 383, pp. 12-13). Moreover, the government so presented its case that the basic testimony relating to the Coppolla, Sanantonio, Donatiello, Levine and Parks bond cashing preceded the testimony relating to Campisi. The evidence against him was direct and simple. It consisted essentially of the testimony of the various bond holders who identified their stolen bonds and stated that they had never endorsed or cashed them or authorized anyone else to

[14] All of the substantive counts which were dismissed dealt with the "McKeon" series of bonds (counts 405-454; 472-521). They were dismissed because the trial court incorrectly recalled Bartkovsky's testimony relating thereto (See Statement, *supra*, pp. 6, n. 8).

do so (see, *e.g.*, II R. 155–160; 160–163; 164–166; 167–169; 169–171), and the testimony of Thomas Bartkovsky who, after recounting his bond cashing experiences with Campisi and Donatiello when the latter two were proceeding as partners, detailed his specific dealings with Campisi after the partnership had been dissolved. In this connection, Bartkovsky identified stolen bonds as the ones that he had received from Campisi for cashing and testified that Campisi gave him blank licenses for identification purposes, and accompanied him on his bond-cashing trips. He stated further that he received a percentage of the profits from these cashed bonds, the remainder of the money going to Campisi (see II R. 187–195, 202–203, 206; cf. II R. 152–154). In short, the evidence implicating petitioner stemmed basically from a single witness (Bartkovsky), was direct and uncomplicated and related to the unlawful cashing of a limited number of stolen bonds. Finally, the trial court in its charge to the jury further segregated the proof, setting out by the count the evidence as to each defendant (see I R. 167–177), and admonishing the jury that "[t]he guilt or innocence of each defendant must be determined individually" (I. R. 164). In the circumstances, there is no reason to suppose that the

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Petitioner raises as a question (Pet. 3), but does not argue that the trial judge erred in not requiring corroboration of accomplice testimony. As we said in No. 383 (p. 13, n. 10), the rule in the federal courts has long been otherwise under this Court's decision in *Caminetti v. United States*, 242 U.S. 470, 495. The trial judge here carefully instructed the jury that accomplice testimony was to be "received with caution and weighed with great care" (I. R. 178; see Statement, *supra*, p. 10).

jury failed to follow the court's instructions. Cf. *Delli Paoli* v. *United States*, 352 U.S. 232, 239; *Opper* v. *United States*, 348 U.S. 84, 94–95.

Like the petitioners in No. 383, petitioner Campisi further urges that although the conspiracy counts were dismissed, all of the evidence relating to those counts improperly remained in the case, necessarily resulting in jury confusion and fatal prejudice (Pet. 11–14, 16–17). But Campisi did not at any stage of the trial, seek relief from the joinder by motion under Rule 14 of the Federal Rules of Criminal Procedure (see Appendix, *infra*, p. 20). As a matter of fact, when, at the close of the government's case, the trial court ruled that the fact that the conspiracy counts were being dismissed did not affect the admissibility of evidence, petitioner's counsel made no objection (see Tr. 863–865). Nor did he object to that portion of the trial court's charge in which the court marshalled the evidence.[16] Cf. *Schaffer* v. *United States*, 362 U.S. 511, 516.

Petitioner makes no showing of prejudice now. His reference (Pet. 11–12) to a few isolated incidents during the trial when the trial court may have expressed its displeasure with a particular item of proof on the conspiracy counts or have refused to allow in certain evidence against a particular defendant is

[16] Counsel did call the court's attention to its erroneous reference to the "McKeon" bonds counts which the trial court had previously dismissed. The court promptly rectified its error in this regard advising the jury that the "McKeon" counts were no longer in the case (see Tr. 1177, 1196).

[17] In this connection, we do not understand petitioner's reference to the "so called 'Marron' bonds" (Pet. 11). Francis J.

not an indication that the court thought the conspiracy counts were not proved or that prejudice necessarily resulted from the admission of evidence. On the contrary, if anything, the court's rulings limiting evidence to a particular defendant, militated against confusion and prejudice. Moreover, a fair reading of the full trial minutes of the court's colloquy with counsel at the conclusion of the government's case establishes, we submit, that the judge

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Marron, an executive of the Federal Reserve Bank of New York, was not a bond-owner whose bonds had been stolen or were otherwise involved in this case. He testified at trial generally to the procedures and practices of selling Series E bonds. He also examined the "Kerpan" bonds (counts 363-369, 395-404), which related only to dealings between Donatiello and Bartkovsky, and stated that although the validating bank stamps on these bonds appeared to be counterfeit, the bonds in all other respects appeared to be genuine obligations of the United States. His testimony in this regard was not received against Campisi, nor were these bonds admitted in evidence against any defendant at this point (see Tr. 476-495).

Further, petitioner's characterization of the Fankuchen bond testimony, and his claim that it gave rise to "the worst confusion of all" (Pet. 12) finds no support in the record. As far as petitioner Campisi was concerned, Bartkovsky had directly testified that he had cashed about $15,000 worth of Fartkuchen bonds for him (II R. 202-203); and, while Campisi was not named in any of the substantive counts involving Fankuchen bonds, this testimony was certainly relevant as proof of similar criminal conduct showing knowledge, motive and intent (cf. *United States* v. *Bollenbach*, 147 F. 2d 199, 200 (C.A. 2), reversed on other grounds, 326 U.S. 607), wholly apart from its admissibility on the conspiracy count. Moreover, the court's statement relied upon by petitioner in this connection that the prosecution did not "get anywhere" had nothing at all to do with this testimony but dealt entirely with a wholly unrelated conversation between Bartkovsky and Donatiello which was admitted only against Donatiello (Tr. 664-671).

dismissed the conspiracy counts not because he thought there had been a failure of proof, but rather for the purpose of simplifying the issues for the jury (see Tr. 797–874, particularly at Tr. 858–866). The record shows that there were repeated and specific statements during the trial to the effect that the evidence relating to the dealings between petitioners in No. 383 (Coppolla and Sanantonio) and their alleged co-conspirators (Donatiello, Levine and Parks) was not to be considered against Campisi (see, *e.g.*, H R. 25, 29, 33, 77, 81, 141). Insofar as evidence adduced at the trial was held admissible against Campisi, such evidence consisted (1) of the acts and statements of Bartkovsky, Campisi and Donatiello when all three were working together from late April to the middle of June 1960; and (2) the later bond cashing activities in which Campisi and Bartkovsky were alone involved. To the extent that such evidence related to the acts and statements of Campisi it was clearly admissible. Insofar as the evidence involved the acts and statements of Bartkovsky occurring out of the presence of Campisi[9] it was equally admissible on the substantive counts without the aid of the conspiracy counts. For even if no conspiracy had been charged, Bartkovsky and Campisi were plainly joint

[9] Bartkovsky had testified that he, Donatiello and Campisi had together embarked and participated in a common scheme of bond cashing in late April 1960 (H R. 179-188). This evidence, as the court of appeals held, "amply proved" the conspiratorial arrangement (see H R. 321).

[10] Bartkovsky's testimony as to his separate bond cashing arrangements with Donatiello after June 1960, was not admitted at trial against petitioner Campisi (see *e.g.*, H R. 201-202, 208-209, 217-218, 221-222, 225-226; cf. H R. 140-141).

venturers, and like rules of evidence would have applied. See *United States* v. *Pugliese*, 153 F. 2d 497, 500 (C.A. 2); *Facchia* v. *United States*, 283 F. 2d 537, 539–540 (C.A. 9). The sum of it is that petitioner was convicted on relevant and competent evidence which indisputably established his guilt on the substantive charges.[20]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1962.

[20] Petitioner says (Pet. 11) that the substantive counts involving the "Lacorte" bonds (counts 458–462, 525–529), should not have been permitted to go to the jury because Bartokovsky who, on direct examination, had testified that he had received those bonds from Campisi, testified on cross and on redirect that he did not recall who gave them to him. But since petitioner's eight year concurrent sentence is wholly supportable on any of the substantive counts which has undisputable support in the evidence (e.g., the "Zimmer" bonds, counts 455–457, 522–524; see statement, *supra*, p. 7), there is no occasion for this Court to consider this contention. *Lawn* v. *United States*, 355 U.S. 339, 359; *Pinkerton* v. *United States*, 328 U.S. 640, 641–642, fn 1; *Hirabayashi* v. *United States*, 320 U.S. 81, 85.

APPENDIX

18 U.S.C. 2 provides in pertinent part:

§ 2. PRINCIPALS.

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

* * * * *

18 U.S.C. 495 provides:

§ 495. CONTRACTS, DEEDS, AND POWERS OF ATTORNEY.

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined not more than $1,000 or imprisoned not more than ten years, or both.

Rule 8 of the Federal Rules of Criminal Procedure provides:

JOINDER OF OFFENSES AND OF DEFENDANTS

(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 14 of the Federal Rules of Criminal Procedure provides:

RELIEF FROM PREJUDICIAL JOINDER

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

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